

GOING FOR THE MONEY

The Drug Trafficking Offences Act in practice

Progress in extending the Act

The Drug Trafficking Offences Act 1986 (DTOA) came fully into force on 12 January 1987. By September 1988 it had been used to freeze more than £10 million of alleged traffickers' assets and £2 million had been confiscated following conviction. To prevent traffickers escaping the Act's powers by exporting their assets, Britain has entered into discussions with over 40 foreign governments to implement provisions which allow for mutual arrangements between the UK and the other nations to freeze and confiscate assets on each other's behalf. Agreement in principle on the most symbolically significant of these arrangements was reached in September when the Home Secretary visited Switzerland. Mutual confiscation arrangements are already in place between the UK and the USA, Canada, Australia and the Bahamas.

In April this year Detective Sergeant Saltmarsh of the Metropolitan Police Drugs Squad — who was involved in the first ever arrest under the DTOA — gave some indication of how important the police think the new law will be:

"I don't think we have yet realised just how powerful the Drug Trafficking Offences Act is. It's retrospective in that it takes note of offences committed before the Act came into force. It's international in that it can deal with offences in other countries, and with money gained outside the UK, and it's far-reaching. It has taken account of the way in which drug dealers dispose of profits by making 'gifts' to relatives in an attempt to avoid confiscation. As soon as the service as a whole realises just how much this Act can assist major drug investigations, the more it will be used." (*Police Review*, 22 April 1988)

However, from the start there were civil liberties concerns over, as the *Criminal Law Review* put it, the fact that three "supposed principles of English criminal justice" were overturned by the DTOA — the presumption of innocence, the requirement that there should have been criminal intent, and the principle that only the offences currently being tried should be considered by the courts (*Criminal Law Review*, September 1986). A barrister has written that the lengths Parliament went to in the DTOA are "profoundly disturbing" (*J. of Crim. Law*, Feb. 1988). Such fears are likely to be exacerbated by plans to extend DTOA type provisions to other non-drug forms of profitable crime.

Druglink

As the first cases under the Drug Trafficking Offences Act come to court, it's becoming clear that a wide circle of the defendant's contacts may be affected.

Jane Goodsir

THE DRUG TRAFFICKING OFFENCES ACT 1986 (DTOA) creates an offence of assisting a trafficker to retain the proceeds of their trafficking, and empowers police and other law enforcement officers to investigate these proceeds. It empowers the courts to freeze assets during the investigations and, finally, to confiscate assets after an assessment of trafficking proceeds. Should confiscation prove impossible, the courts can impose prison sentences instead.

In the past few months the first cases brought under the Act have gone to court. Police and the Crown Prosecution Service have devoted substantial resources to investigations and proceedings under the DTOA. Such is the complexity of many recent proceedings that it's rumoured special judges have been groomed to deal with applications brought to court.

The Act will probably be of greater significance to professionals working in property and finance than to people working with known drugs offenders. However, it's worth looking at some of its main provisions to assess the implications for people working with drug users and for drug users' families.

Freezing provisions. These are preemptive measures to deal with laundered money, allowing assets to be frozen pending an investigation over whether laundering has taken place. Investigators even have access to deeds held by a solicitor and can take material away. Few records will be exempt from the DTOA, including information held on file by a solicitor.

The courts may, on application, allow money to be drawn from frozen assets for particular purposes. Practice has been only to allow minimal living expenses and, for instance, legal fees.

Laundering. The laundering provisions establish a new offence of assisting someone to retain the proceeds of drug trafficking. This aspect of the legislation can be particularly worrying for the professional

associates of a trafficker.

To secure a conviction, it is necessary to prove:

- there was an identifiable trafficker;
- the proceeds were dealt with directly or indirectly;
- the accused was concerned in an arrangement to help the trafficker retain these proceeds;
- the accused knew or suspected that the person they were helping was a trafficker.

There is no need to prove a formal laundering arrangement nor to show that the accused benefited from the arrangement.

Confiscation. Confiscation occurs only after a trafficking conviction. Procedure to deal with confiscation has yet to be settled. The prosecution has to provide an assessment of the offender's assets (including realisable property) and of the proceeds they derived from trafficking. To gain this information, police question defendants on bank accounts and other business affairs after they have been charged but before conviction. If convicted the onus will be on the defendant to prove that any of their assets were *not* gained through trafficking. This means that, although they have the right to remain silent, there is strong pressure on defendants to make full disclosure of their non-drug income sources. Otherwise assets unaccounted for may be confiscated by default.

SOLICITORS ACTING for the defendants in DTOA proceedings can easily find themselves tied up in what might be seen by the court as a laundering arrangement. Drugs agency staff and private doctors should be aware that they are vulnerable when handling money for or from drug users and in giving certain kinds of legal advice. They may be subject to investigation under the police's freezing or confiscation powers, or may even be accused of helping launder a convicted trafficker's funds. A particular difficulty arises in tipping off a suspect that police are making enquiries under the DTOA.

It may not be apparent to a suspected trafficker's contacts that an investigation is underway. Enquiries under the DTOA can be retrospective for a period of up to six years. Families of suspected traffickers or launderers can have their financial interests badly affected by freezing and confiscation provisions, and will often need to instruct their solicitors to represent their own interests. Anyone advising someone accused of trafficking — particularly if they are drawn into offering legal or financial first aid — should themselves get legal advice on their position under the Act from Release (01-377 5905) or some other competent source.

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